

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:04CR114**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>MERLE LEROY ADAMS, JR.</b>	)	
	)	

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**THIS MATTER** is before the court upon defendant's Motion for Leave to Withdraw Plea of Guilty. The government has informed the court that it does not oppose withdrawal of the plea. Under Rule 11(d)(2)(B), Federal Rules of Criminal Procedure, a plea may be withdrawn after acceptance where "the defendant can show a fair and just reason for requesting withdrawal." In this case, defendant argues that soon after he entered his plea on February 16, 2005, the Court of Appeals for the Fourth Circuit clarified the law concerning stopping and patting down individuals based on uncorroborated citizen tips. United States v. Brown, \_\_\_ F.3d \_\_\_, No. 04-453 (4<sup>th</sup> Cir. March 25, 2005). While defendant concedes that Brown is not precisely on point, Motion, at ¶ 5, the court finds that such development in the law is a "fair and just reason for requesting withdrawal." Having considered defendant's motion and reviewed the pleadings, the court enters the following Order.

**ORDER**

**IT IS, THEREFORE, ORDERED** that defendant's Motion for Leave to Withdraw Plea of Guilty is **ALLOWED**, the Plea Agreement is **STRICKEN**, and this court acceptance

of such agreement is **WITHDRAWN**, and the Clerk of this court is instructed to reset this matter on the July 2005 trial calendar.

In accordance with 18, United States Code, Section 3161(I), because “defendant had entered a plea of guilty . . . subsequently withdrawn . . . the defendant shall be deemed indicted . . . on the day the order permitting withdrawal of the plea becomes final.” Inasmuch as the government is not contesting the motion, this Order becomes final the day of filing, and the Clerk is instructed to exclude in calculating speedy trial all days that precede entry of this Order, and reset the speedy trial clock as of this date.

**Signed: May 26, 2005**

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

